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SUPREME COURT U. S.

Supreme Court of the United States

No. [illegible]

ELMER M. HARRIS,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI

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TO: HONORABLE CHIEF JUSTICE & JUSTICES
Supreme Court of the United States of America

COMES NOW ELMER M. HARRIS, by and through his undersigned attorney, and respectfully petitions this Honorable Court to issue its Writ of Certiorari directed to the Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, and as grounds for said Petition would respectfully submit:

1. A copy of the Judgment of the United States District Court attached hereto and made a part hereof and designated "Petitioner's Exhibit A."

2. A copy of the Opinion of the Court of Appeals for the Fifth Circuit attached hereto, made a part hereof and designated as "Petitioner's Exhibit B."

STATUTES INVOLVED

Title 18, United States Code, §2:

§2. Principals

(a) Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

(b) Whoever causes an act to be done, which if directly performed by him would be an offense against the United States, is also a principal and punishable as such.

Title 18, United States Code, §2314:

§2314. Transportation of stolen goods, securities, monies, or articles used in counterfeiting

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000. or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution

or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000. or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or any part thereof—

Shall be fined not more than $10,000. or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of any obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country. As amended July 9, 1956, c. 519, 70 Stat. 507.

JURISDICTION

The jurisdiction of this Court is sought to be invoked by virtue of the discrepancy of the decision heretofore

rendered by the Court of Appeals for the Fifth Circuit in the case at bar and the decisions of other Circuits, wherein the facts as proven in this case have been held not to constitute a violation of the Statutes hereinbefore cited. See LOMAN v. U.S., 243 F.2d. 327, and ROWLEY v. U.S., 191 F.2d. 949.

RESUMÉ

Your Petitioner, ELMER M. HARRIS, formerly a citizen of Dade County, Southern District of Florida, was tried before the Honorable WILLIAM C. MATHES, United States District Judge, for the Southern District of California, sitting by designation at Miami, in the Southern District of Florida, on February 8th, 1960, on the charges contained in a thirteen count Indictment, each charging alleged violations of Title 18, U.S.C., Sections 2 and 2314, alleging that the Defendant, Petitioner herein, did with unlawful and fraudulent intent cause to be transported in interstate commerce from Miami, Florida, to Chicago, Illinois, a series of checks signed "Arthur Markle", knowing same to have been falsely made and forged. The case was tried by the Court with a Jury, and the Jury returned a verdict of guilty as to all thirteen counts. A Motion for New Trial was thereafter filed and denied by the Trial Court and, thereafter, on the 19th day of February, 1960, your Petitioner was sentenced to three (3) years confinement on each of the first three counts, said sentences to run concurrently, and Petitioner was placed on probation for a period of five years on Counts 4 through 13 inclusive, with the period of probation to commence upon Defendant's release from confinement on the sentence imposed on Counts 1 through 3.

Thereafter, an Appeal was taken to the United States Court of Appeals for the Fifth Circuit; this also was denied, but the Appellant's counsel of record was not notified of the entry of the Order Denying the Re-Hearing and, therefore, a second Petition for Re-Hearing was authorized by the Court of Appeals, and summarily denied so as to permit the filing of this Petition for Writ of Certiorari. Thereafter, on or about the 19th of April, 1961, counsel for Petitioner submitted a sworn Petition to this Court, requesting an extension of time within which to file this Petition for Writ of Certiorari, which Petition was granted by Order of the Honorable HUGO L. BLACK, Associate Justice of the Supreme Court of the United States by Order dated the 20th day of April, 1961.

STATEMENT OF THE CASE

The checks, with which the Defendant is charged with having caused to be transported in interstate commerce, were purportedly drawn on the account of a friend of the Defendant of some twenty-two (22) years standing and were drawn a short time after the purported check Maker and his son had visited in the home of the Defendant Petitioner. ARTHUR MARKLE, the friend of twenty-two years standing, took the stand and denied that the signatures on these thirteen checks were his. The Government then offered the teller of a Miami bank, whose testimony merely showed that the checks had either been cashed at his bank or deposited to the Defendant's account. There was no testimony as to who deposited them to the Defendant's account or who cashed the ones that were cashed at the bank. The Government then offered the testimony of an electric light company employee, telephone company employee and the proprietor of a drug